

Karen L. Dunn (*pro hac vice*)
kdunn@paulweiss.com
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
2001 K Street, NW
Washington, DC 20006
Telephone: (202) 223-7300
Facsimile: (202) 223-7420

Walter F. Brown Jr. (SBN: 130248)
wbrown@paulweiss.com
Meredith R. Dearborn (SBN: 268312)
mdearborn@paulweiss.com
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
535 Mission Street, 24th Floor
San Francisco, CA 94105
Telephone: (628) 432-5100
Facsimile: (628) 232-3101

Attorneys for Defendant Meta Platforms, Inc.

[Additional Counsel on Signature Page]

John C. Quinn (*pro hac vice*)
jquinn@heckerfink.com
Amit Jain (*pro hac vice*)
ajain@heckerfink.com
Hyatt Mustefa (*pro hac vice*)
hmustefa@heckerfink.com
Jocelyn Hassel (*pro hac vice*)
jhassel@heckerfink.com
Tayonna Ngutter (*pro hac vice*)
tngutter@heckerfink.com
HECKER FINK LLP
350 Fifth Avenue, 63rd Floor
New York, NY 10118
Telephone: (212) 763-0883

Joshua Matz (*pro hac vice*)
jmatz@heckerfink.com
HECKER FINK LLP
1050 K Street NW, Suite 1040
Washington, DC 20001
Telephone: (212) 763-0883

Attorneys for Plaintiff Dr. Andrew Forrest

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DR. ANDREW FORREST.

Plaintiff,

V.

META PLATFORMS, INC., a Delaware Corporation, and DOES 1 through 20, inclusive.

Defendant.

Case No. 22-cv-03699-PCP

UPDATED JOINT CASE MANAGEMENT STATEMENT

The Hon. P. Casey Pitts

1 In accordance with Civil Local Rule 16-9, the Standing Order for All Judges of the Northern
 2 District of California, and the Court’s Order that the parties file an Updated Joint Case Management
 3 Statement, Plaintiff, Dr. Andrew Forrest (“Dr. Forrest”), and Defendant Meta Platforms, Inc.
 4 (“Meta”) submit the following Updated Joint Case Management Statement. A Case Management
 5 Conference (“CMC”) is scheduled for October 31, 2024.

6 **1. Jurisdiction and Service**

7 Meta removed this case from California Superior Court based on federal question
 8 jurisdiction. ECF # 1 at ¶ 5. Meta is subject to personal jurisdiction in this District, and venue is
 9 appropriate under 28 U.S.C. § 1391(b). Meta has been served.

10 **2. Facts**

11 **Dr. Forrest:** Dr. Andrew Forrest is one of Australia’s preeminent businessmen and a
 12 globally recognized philanthropist. In bringing this lawsuit, Dr. Forrest seeks to hold Meta liable
 13 for its role in the creation, targeting, and success of scam advertisements (the “Scam Ads”) shown
 14 on its Facebook and Instagram platforms. These Scam Ads use Dr. Forrest’s name and likeness to
 15 falsely imply or explicitly state he endorses certain schemes promoted in the Ads. Australians and
 16 others have been defrauded out of millions of dollars by the Scam Ads, and Dr. Forrest himself has
 17 suffered reputational and other harm from the misuse of his valuable name and image. Before filing
 18 this lawsuit, Dr. Forrest put Meta on notice of the Scam Ads, demanding repeatedly, in writing and
 19 verbally, that Meta take action to prevent the creation and dissemination of Scam Ads. Meta did
 20 nothing effective to stop the Scam Ads. Instead, Meta continues to materially contribute to, co-
 21 create, facilitate, develop, and profit from Scam Ads that misappropriate Dr. Forrest’s name and
 22 likeness and cause him harm.

23 In addition to the agreed-upon issues listed by the parties below, the following factual issues
 24 are also in dispute:

- 25 • whether Meta materially contributed to the Scam Ads in question; and
- 26 • whether Meta negligently designed and operated its platforms in a way which
 27 facilitated and otherwise failed to screen and review for Scam Ads.

1 **Meta:** In his Third Amended Complaint (“TAC”),¹ Dr. Forrest alleges that third-party
2 fraudsters used his likeness and image, without his consent, to create advertisements that falsely
3 represent him as promoting certain “scam” investment opportunities or financial products. (TAC
4 ¶ 55.) According to Dr. Forrest, Meta’s advertising tools “co create” these ads, materially
5 contributing to the aspect of these ads that he alleges is illegal. This is not true. Rather, advertisers
6 are responsible for supplying the material elements of an ad (including any images and text),
7 creating the ad, and ultimately deciding how an ad looks before it is distributed. Contrary to Dr.
8 Forrest’s allegations, any alterations Meta’s tools make do not materially contribute to the allegedly
9 illegal content of the advertisements about which Dr. Forrest complains. Meta is entitled to
10 immunity from Dr. Forrest’s claims under Section 230 of the Communications Decency Act.
11 Further, Meta has meaningful safeguards in place and has developed robust processes in an effort
12 to combat the creation and distribution of scam and fraudulent advertisements. Meta further
13 submits that Dr. Forrest’s list of “factual” issues in dispute are more appropriately characterized as
14 legal issues.

15 The parties agree that the principal factual issues in dispute include:

- 16** • whether Meta used Dr. Forrest’s identity, including his name and likeness, without his
17 consent;
- 18** • whether Meta failed to deploy reasonable measures to identify and reject suspect
19 advertising clients before scam and fraudulent advertisements are produced or
20 disseminated;
- 21** • whether Meta profited from ads that allegedly misappropriated Dr. Forrest’s name or
22 likeness; and
- 23** • whether Dr. Forrest has been harmed by Meta’s alleged acts and omissions.

3. Legal Issues

24 Following the Court’s Motion to Dismiss Opinion (the “Opinion”) rendered on June 17,
25 2024, Dr. Forrest’s remaining causes of action, both asserted under California law, are for: (1)

27 ¹ The Third Amended Complaint was filed in the Northern District of California on December 1, 2023. The First and
28 Second Amended Complaints were filed in the Superior Court of the State of California, County of San Mateo (on
September 17, 2021 and June 17, 2022 respectively).

1 negligence and (2) misappropriation.² The parties agree that the currently disputed legal issues
 2 include:

- 3 • whether Section 230(c)(1) of the Communications Decency Act affords a defense to
 Meta from liability in this case;
- 4 • whether Meta is liable for negligence;
- 5 • whether Meta is liable for misappropriation;
- 6 • whether Dr. Forrest has and continues to suffer harm by Meta's alleged acts and
 omissions; and
- 7 • whether Dr. Forrest is entitled to relief, including injunctive relief.

10 **4. Motions**

11 **Pending Motions:** There are no motions currently pending with the Court.

12 **Prior Motions:** Since the previous Joint Case Management Statement filed on October 12,
 13 2023 (Dkt. No. 87), on January 19, 2024, Meta filed a Motion to Dismiss Plaintiff's Third Amended
 14 Complaint.³ On June 17, 2024, the Court granted the Motion to Dismiss in part and denied it in
 15 part, sustaining Dr. Forrest's negligence and misappropriation claims. The Opinion also permitted
 16 Meta to make a motion to request that the existing stay be extended. On June 28, the parties
 17 proposed a stipulation and proposed order extending Meta's deadline to move to stay until July 9,
 18 which the Court approved on July 1, 2024. On July 3, 2024, Meta filed a Motion for Certification
 19 under 28 U.S.C. § 1292(b) of the Court's Opinion, and on July 9, 2024, Meta filed a Motion to Stay
 20 pending the resolution of Meta's Motion for Certification. On August 22, 2024, the Court denied
 21 both of those motions.

22
 23
 24
 25 ² Dr. Forrest agreed to dismiss his promissory estoppel claim voluntarily. In the Opinion, the Court dismissed Dr.
 Forrest's claims for the negligent failure to warn, unjust enrichment, and declaratory judgment claims with leave to
 amend. Dr. Forrest did not further amend his complaint.

26
 27 ³ As noted *supra* n.1, the First Complaint and the Second Amended Complaint were filed in the Superior Court of the
 State of California, County of San Mateo (Case No. 21-CIV-05055) prior to the removal of this case to the Northern
 District of California. On July 18, 2022, Meta filed a Motion to Dismiss the Second Amended Complaint in the
 Northern District of California.

1 Anticipated Motions:

2 **Dr. Forrest:** Dr. Forrest may file a Cross-Motion for Partial Summary Judgment to exclude
 3 the Section 230 affirmative defense.

4 **Meta:** As the Court contemplated, Meta anticipates filing an early Motion for Summary
 5 Judgment on Section 230 immunity grounds. *See* 2024-08-22 Hrg. Tr. 42:6-43:7.

6 5. Amendment of Pleadings

7 The parties do not anticipate amending any pleadings at this time.

8 6. Evidence Preservation

9 The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
 10 Information (“ESI Guidelines”) and are continuing to meet and confer pursuant to Federal Rule of
 11 Civil Procedure 26(f) regarding reasonable and proportionate steps to take regarding evidence
 12 preservation. The parties are continuing to meet and confer regarding evidence preservation issues,
 13 and agree that, if necessary, it may be productive to discuss those issues with the Court at the
 14 appropriate time, or potentially through the process set forth in Magistrate Judge DeMarchi’s
 15 Standing Order for Civil Cases.

16 7. Disclosures

17 On October 3, 2022, the parties exchanged initial disclosures pursuant to Federal Rule of
 18 Civil Procedure 26(a)(1)(A). On August 29, 2024, Meta supplemented its initial disclosures.

19 8. Discovery**20 A. Discovery Taken to Date**

21 There has been no discovery to date.

22 B. Scope and Subjects of Anticipated Discovery

23 The parties have agreed to a bifurcated discovery schedule, first engaging in discovery
 24 regarding the asserted Section 230 affirmative defense, focusing on whether and how Meta
 25 allegedly materially contributed to the allegedly illegal content. Through a meet-and-confer
 26 process, the parties have reached an initial shared understanding that such discovery will include
 27 (though not be limited to) ad creation, and that the parties will further discuss appropriate discovery
 28 requests related to ad targeting. The parties further agree that it would be most productive to meet

1 and confer further on issues relating to the scope of discovery in view of requests and responses,
 2 once served. Following completion of this discovery, Meta then intends to file an early Motion for
 3 Summary Judgment on Section 230 grounds, and Dr. Forrest may file a Cross-Motion for Partial
 4 Summary Judgment to defeat any defense under Section 230. To the extent Meta's Motion for
 5 Summary Judgment on Section 230 immunity grounds is denied, the parties will complete the
 6 remainder of discovery. If that discovery proceeds, and without waiving any objections, the scope
 7 of anticipated discovery includes non-privileged matter relevant to the claims and defenses in this
 8 action and proportional to the needs of the case.

C. Report on Stipulated E-Discovery Order

10 The parties have reviewed the Model ESI Guidelines for the Northern District. The parties
 11 plan to meet and confer regarding the identification of appropriate custodians, search terms, and
 12 timeframes for ESI searches in response to their respective discovery requests. The parties are
 13 meeting and conferring regarding an e-Discovery stipulation.

D. Discovery Plan

15 The parties agree to the presumptive limits on discovery set forth in the Federal Rules
 16 of Civil Procedure and the Court's Local Rules and Standing Orders. The parties agree to meet
 17 and confer regarding any further stipulations or protocols that may become necessary as
 18 discovery progresses. The parties also agree to meet and confer further on the number, and
 19 identity, of document custodians and custodial searches in view of discovery requests, once
 20 served, and agree that the first phase of discovery will also include non-custodial, targeted
 21 searches. For information regarding initial disclosures, scheduling, the scope and bifurcation
 22 of discovery, and ESI, please refer to Paragraphs 7, 8A, 8C, 15 of this Updated Joint Case
 23 Management Statement, respectively.

9. Class Action

25 This is not a class action.

10. Related Cases

A. Australian Criminal Proceeding

28 N/A - The Australian court dismissed the case on April 12, 2024.

1 **11. Relief**

2 **Dr. Forrest:** Dr. Forrest seeks (i) compensatory damages; (ii) punitive damages; (iii)
 3 injunctive relief prohibiting Meta from engaging in the negligent, unlawful, and unfair conduct
 4 alleged in the TAC; (iv) a declaration rejecting Meta's affirmative defense under 47 U.S.C. § 230;
 5 and (v) other and further relief, including his attorneys' fees. Dr. Forrest disputes that Meta is
 6 entitled to any relief, including special costs or attorneys' fees.

7 **Meta:** Meta seeks the following relief: (i) judgment in favor of Meta and against Plaintiff;
 8 (ii) an order that this is an exceptional case and an award of Meta's attorneys' fees, expenses, and
 9 costs pursuant to 15 U.S.C. § 1117(a); (iii) an award of costs and reasonable attorneys' fees; and
 10 (iv) an award of other such relief as the Court may deem appropriate. Meta disputes that Plaintiff
 11 is entitled to the relief listed above or any other relief. At this stage of the litigation, Meta is not in
 12 a position to describe the basis on which any alleged damages should be calculated in the event
 13 liability were established.

14 **12. Settlement and ADR**

15 The parties conferred and have not agreed to private mediation.

16 **13. Other References**

17 This case is not suitable for reference to binding arbitration, a special master, or the Judicial
 18 Panel on Multidistrict Litigation.

19 **14. Narrowing of Issues**

20 The parties have not presently identified any issues that can be narrowed. The parties will
 21 work in good faith to narrow any issues as discovery proceeds.

22 **15. Scheduling**

23 As discussed above, the parties have reached agreement on a proposed bifurcated discovery
 24 schedule, with the first phase of this case focusing on Meta's asserted defense under Section 230.
 25 To the extent the Court denies Meta's Motion for Summary Judgment on Section 230 immunity
 26 grounds, the parties agree to confer on a schedule to complete merits discovery on the remaining
 27 issues in dispute.

Event	Deadline
Substantial completion of document production	March 31, 2025
Completion of fact discovery	May 30, 2025
Exchange of opening expert reports	June 30, 2025
Exchange of rebuttal expert reports	July 30, 2025
Completion of all expert discovery	August 29, 2025
Meta's Motion for Summary Judgment on Section 230 defense	October 1, 2025
Dr. Forrest's Opposition to Meta's Summary Judgment Motion, and Dr. Forrest's Cross-Motion for Partial Summary Judgment (if applicable)	November 3, 2025
Meta's Reply in Further Support of Summary Judgment, and Opposition to Dr. Forrest's Cross-Motion for Partial Summary Judgment (if applicable)	November 24, 2025
Dr. Forrest's Reply in Further Support of Partial Summary Judgment (if applicable)	December 8, 2025

The parties' agreement to the above schedule is contingent upon efficiency and compromise in the meet-and-confer process and a reasonable scope of discoverable information with respect to Section 230 issues. Should the parties need additional time to complete discovery, the parties will meet and confer in good faith to revise the proposed schedule.

16. Trial

Dr. Forrest and Meta expect a trial to run 5–7 full days, depending on whether the issues, as outlined herein, can be narrowed between now and the date of trial.

17. Disclosure of Non-Party Interested Entities or Person

Meta has filed the Certification of Interested Entities or Persons Required by Civil L.R. 3-15. As set forth therein, Meta states that, other than the named parties, there are no persons, associations of persons, firms, partnerships, corporations (including parent corporations), or other entities that (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or that (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding.

1 **18. Professional Conduct**

2 All attorneys of record for the parties certify that they have reviewed the Guidelines for
3 Professional Conduct for the Northern District of California.

4 **19. Additional Matters**

5 The parties hereby stipulate to receive service of pleadings and written discovery in this
6 case electronically in accordance with Federal Rule of Civil Procedure 5(b)(2)(E).

7 The parties have not identified any additional matters that require the Court's attention at
8 this time.

9
10 DATED: October 17, 2024

11 Respectfully submitted,

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 By:

2 /s/ John C. Quinn

3 John C. Quinn (*pro hac vice*)
4 jquinn@heckerfink.com
5 Amit Jain (*pro hac vice*)
ajain@heckerfink.com
6 Hyatt Mustefa (*pro hac vice*)
hmustefa@heckerfink.com
7 Jocelyn Hassel (*pro hac vice*)
jhassel@heckerfink.com
8 Tayonna Ngutter (*pro hac vice*)
tngutter@heckerfink.com
9 **HECKER FINK LLP**
10 350 Fifth Avenue, 63rd Floor
New York, NY 10118
Telephone: (212) 763-0883

12 Joshua Matz (*pro hac vice*)
jmatz@heckerfink.com
13 **HECKER FINK LLP**
14 1050 K Street NW, Suite 1040
Washington, DC 20001
Telephone: (212) 763-0883

15 Leslie Brueckner (SBN: 140968)
lbrueckner@singletonschreiber.com
16 **SINGLETON SCHREIBER**
17 591 Camino de la Reina, Suite 1025
San Diego, CA 92108
Telephone: (619) 573-1851

19 Elizabeth Ryan (*pro hac vice*)
eryan@baileylglasser.com
20 **BAILEY & GLASSER LLP**
21 176 Federal Street, 5th Floor
Boston, MA 02110
Telephone: (617) 439-6730

23 Derek G. Howard (SBN: 118082)
derek@derekhowardlaw.com
24 Ashley M. Romero (SBN: 286251)
ashley@derekhowardlaw.com
25 **DEREK G. HOWARD LAW FIRM, INC.**
42 Miller Avenue
Mill Valley, CA 94941
Telephone: (415) 432-7192

28 *Attorneys for Plaintiff Dr. Andrew Forrest*

/s/ Karen L. Dunn

Karen L. Dunn (*pro hac vice*)
kdunn@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, NW
Washington, D.C. 20006
Telephone: (202) 223-7300
Facsimile: (202) 223-7420

Walter F. Brown Jr. (SBN: 130248)
wbrown@paulweiss.com
Meredith R. Dearborn (SBN: 268312)
mdearborn@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
535 Mission Street, 24th Floor
San Francisco, CA 94105
Telephone: (628) 432-5100
Facsimile: (628) 232-3101

Amy L. Barton (*pro hac vice*)
abarton@paulweiss.com
T. Patrick Cordova (*pro hac vice*)
pcordova@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

Jacob M. Heath (SBN: 238959)
jheath@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025-1015
Telephone: (650) 614-7400
Facsimile: (650) 614-7401

Attorneys for Defendant Meta Platforms, Inc.